IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEALS NO. 197/2000 & 205/2000.

FIRST APPEAL NO. 197/2000

1. Shri Agnelo Jose Augusto Pinto,
2. Shri Carlos Alvito Gustavo Pinto,
   Both r/o. St. Cruz, Ilhas, Goa ..... Appellants.

V/s.

Shri Gustavo Renato de Cruz
Pinto, r/o. St. Cruz, Ilhas, Goa. ..... Respondents.

FIRST APPEAL NO. 205/2000

1. Mrs. Aida Menezes Braganza,
   widow, landlady,
2. Miss Maria Luiza Braganza
   (expired)
   2.i) Mrs. Aida Menezes Braganza
   (the appellant no.1)
   2.ii) Miss Laura Braganza Pereira
   (the appellant No.3)
   Both r/o. Villa Dr. Braganza
   Miramar, Panaji-Goa.
   2.iii) Mr. Francisco Armindo
   Felix Pereira
   r/o. Avenida de Republica,
   4-80, Lisboa,

3. Miss Laura Braganza Pereira,
   (since deceased)
4. Lt. General Walter Anthony Gustavo Pinto
5. Mrs. Teresa Maria Rodrigues e Pinto,
   Both r/o. No.1, Arun Khetrapal Marg,
   Pune 1. ..... Appellants.

V/s.

1. Shri Gustavo Renato de Cruz Pinto,

2. Shri Agnelo Jose Augusto Pinto,
3. Shri Carlos Alvito Gustavo Pinto,
Both r/o. St. Cruz, Ilhas, Goa ..... Respondents.

Mr. R. G. Ramani, Advocate for the appellants.

Mr. S.G. Bhobe, Advocate for the respondents.

CORAM : P.V. KAKADE, J.

DATE : 23RD AUGUST, 2006.

ORAL JUDGMENT :

Heard learned Counsel for both the parties. Perused the record.

2. These appeals are preferred against the Award of rejection of the reference passed by the Additional District Judge, Panaji by Order dated 17.4.2000 under Section 30 of the Land acquisition Act.

3. The reference under Section 30 of the Land acquisition Act was referred as there was a dispute in respect of the compensation awarded on the strength of the ownership. An area of 5660 sq. metres was acquired from the property bearing P.T. Sheet No.117, Chalta No.1(Part) for construction of buildings for Food Craft Institute at Miramar. The Land Acquisition Officer found that more than one person were claiming right

over the plots bearing P.T. Sheet No.117 and hence made reference. Notices were issued to the parties. The applicant filed written statement stating that he was entitled for the entire compensation as he was absolute owner of the property known as "Baili Veli" situate at Gaspar Dias, Miramar and it was ancestral property initially belonging to the applicant's father Shri Gustavo Pinto and in the year 1940 or 1941 one of the uncles of the applicant by name Alexendre Pinto who was one of the heirs of the said property sought partition of the share by instituting a civil suit in the Court at Panaji and got his share of 15/32 of the said property separated and thereafter, started enjoying his share separately and the remaining share i.e. 17/32 came to be possessed and enjoyed by the applicant's father exclusively.

4. After hearing both the parties and on perusal of the record, it appears that the learned reference Court Judge has missed the point which was required to be adjudicated under Section 30 of the Land acquisition Act. The factual aspect involved in these matters shows that a suit for partition, bearing Civil Suit No.129/1972 was decreed by the Civil Judge, Senior Division, Panaji in the year 1986. Thereafter, first appeal against the said decree also came to be dismissed in the year 1994. The Second Appeal which was preferred was also dismissed in the year 1997

and, therefore, the decree passed in the Civil Suit No.129/1972 in favour of the present appellants attained finality wherein his share was adjudicated to be 491/1020 in the said property. It is also evident that the claim of the present respondent came to be negatived in the said proceeding finally by virtue of the second appeal adjudicated by this Court.

5. On this background, it was necessary for the reference Court to determine the share of the parties in exercise of apportionment of compensation in favour of the applicant as well as other sharers Instead of that, for irrelevant reasons, the reference has been rejected in taking into account the factum of adjudication of the share by the competent Court of law which, in my view, is an error committed by the reference Court.

The learned Counsel for the appellants urged that the said exercise also be completed in this Court as the record was available before this Court. However, I must note that there is nothing on record to show that all the persons who were entitled by way of apportionment were duly notified by the reference Court while adjudicating the reference under Section 30 of the Act and hence, it would not be prudent on our part to adjudicate the matter hastily at this stage. In the result, I

hold that the matters are required to be remanded to the reference Court with certain directions.

6. Hence, the appeals are allowed. The order of the reference Court dated 17.4.2000 is, hereby, set aside and the matters are remanded to the District Court, Panaji for adjudicating afresh as contemplated under Section 30 of the Land Acquisition Act. While doing so, the District Court shall take into account the fact that the requirement of notices to all the sharers and the persons interested are to be in issue and the matters shall be heard and disposed of after giving opportunity to the concerned parties to put up their cases. The notices are to be issued to the claimants i.e. the sharers whose names are appearing in Civil Suit No. 129/72. It is also made clear that the appellants in First Appeal No. 205/2000 shall also be entitled to appear and lead their evidence. It is clarified that the appellants as well as the respondent have already led their own evidence in these proceedings and it will not be necessary for them to lead evidence afresh. However, the parties who may appear subsequent to the fresh notices by the District Court shall also be given opportunity to lead their evidence, if any.

The entire exercise shall be completed by the reference Court

within six months from the date of receipt of writ of this Court. With these directions, both the appeals stand disposed of with no order as to costs.

P.V. KAKADE, J.

ssm.